

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EURO PACIFIC CAPITAL INC, INDIVIDUALLY,  
AND IN ITS CAPACITY AS INVESTOR  
REPRESENTATIVE AND ATTORNEY-IN-FACT FOR  
BARBARA SUE WILSON AND DAVID D. WILSON  
AS TRUSTEES FOR THE BARBARA SUE WILSON  
TRUST U/A 8/23/94; et. al.,

Plaintiffs,

vs.

YAYI INTERNATIONAL INC.,

Defendant.

15 Civ. 00359 (VSB) (KNF)

**SUPPLEMENTAL  
AFFIRMATION OF DAVID  
GRAFF IN SUPPORT OF  
INQUEST MEMORANDUM**

I, David Graff, an attorney duly admitted to practice before the Courts of this State, swear as follows under penalty of perjury under the laws of the United States of America:

1. I am a Shareholder with the law firm of ANDERSON KILL P.C., attorneys for Plaintiff, Euro Pacific Capital, Inc. (“Plaintiff” or “Euro Pacific”), individually and in its capacity as Investor Representative and attorney-in-fact for Barbara Sue Wilson and David D. Wilson as trustees for the Barbara Sue Wilson U/A 8/23/94; Douglas W. Johnson as trustee for the Douglas William Johnson Revocable Trust U/A 6/25/10; Heidi W. Keine and Kevin Keine; Janet D. Russell as trustee for the Janet Dickinson Russell Living Trust is a Trust U/A 1/20/10; NFS/FMTC Rollover IRA FBO Jerry R. Speaks; NFS/FMTC Rollover IRA FBO Robert M. Weissberg; Point Aux Chenes LLC; Bruce Walker Ravenel; POM Investments; Jeff Archibald; Norman E. Apperson, Pamela Mceachern as trustees for the Norman E. Apperson and Pamela Mceachern Trust, U/A 7/22/96; The Drew & Raskin Profit Sharing Plan FBO Stephen Raskin; Carlos A. Merino as trustee for the Carlos Alfonso Merino Revocable Living Trust U/A 12/4/96;

Barbara J. Peterson as trustee for the Barbara J. Peterson Revocable Trust U/A 2/4/00; Carolyn R. Long; Corey Shannon McNamee; Eva Marie Salas as trustee for Eva M. Salas; Jimmie C. West and Carolyn E. West; Joseph McCarthy and Miki McCarthy; Mark Dugger as administrator for The Allstates Drywall Inc. EE S T; Michael J. Hanratty and Lynsay F. Hanratty; Mitchell Martin and Deborah Martin; NFS/FMTC Roth IRA FBO Virginia C. Adams; NFS/FMTC SEP FBO Carter Laren; NFS/FMTC SEP FBO Gerald Mona; Oleksandr Tumko and Oksana Tumko; Thomas L. Ingram and Carissa Ingram as trustees for the Ingram Living Trust U/A 11/2/05; Timothy Crane as trustee for the Timothy R. Crane Trust; William Bradley as administrator for the Bradley Anesthesiology Profit Sharing Plan; Art Kleppen and Kimberly Kleppen; Brent Paulger and Sharissa Paulger; Kevin Moore; NFS/FMTC IRA FBO Robert Stephen Adams; NFS/FMTC SEP IRA FBO Gerald E. Manwill; Steve Hoke and Collen Hoke as trustees for the Hoke Living Trust U/A 4/19/02; Arnold William Goldschlager and Nora Goldschlager as trustees for the Goldschlager Family Trust U/A 6/24/04; Uzzi Reiss and Yael Reiss as trustees for the Reiss Family Trust U/A 12/29/88; John A. Rupp as trustee the John A. Rupp Trust U/A 3/9/07; Laura Smith and Forrest Smith as trustees for the Connelly Johnson Smith Family Trust U/A 4/2/09; Marc A. Pierre as administrator for the Center For Physical Health 401K Profit Sharing Plan; NFS/FMTC Rollover IRA FBO Lynn Rollins Stull; NFS/FMTC Rollover IRA FBO Ronald Allen McCann; NFS/FMTC Roth IRA FBO Helen Erskine; Prasad Realty Corp.; William A. Karges Jr. as trustee for the Karges Revocable Intervivos Trust U/A 4/29/85; David W. Larson and Jennifer L. Larson; John D. Smead; Mark Edward Smead as trustee for the Mark E. Smead Revocable Living Trust U/A 11/17/95; NFS/FMTC Rollover IRA FBO Bertrand Brooks Carder; NFS/FMTC Rollover IRA FBO Edwin Bruno Kaehler; Richard Griff and Jackie Griff; Barbara Seidel as trustee for the Barbara Gallun Seidel Residual Trust U/A 2/9/60; Bert

Huntsinger; Christianna Seidel as trustee for the Christianna Seidel Property Trust U/A 11/5/99  
FBO Christianna Seidel; David Brisbin as trustee for the Innes Brisbin Living Trust U/A 6/8/04;  
George Feldman; Gilbert Dominguez as trustee for the Dominguez Trust U/A 3/3/05; Hement  
Kathuri as administrator for the H. Kathuria Investments II P Plan; Jim Robert Pugh; Kenntih H.  
Nass and Maureen Nass as trustees for the Kenneth H. & Maureen K. Nass Chari Trust U/A  
6/7/05; KK Swogger Asset Management; Maureen K. Nass and Kenneth H. Nass as trustees for  
the Maureen K. Nass Living Trust U/A 5/16/05; NFS/FMTC IRA FBO Diane D. Spolum;  
NFS/FMTC Rollover IRA FBO of Andres Keichian; NFS/FMTC Rollover IRA FBO Ralph Dale  
Edson; Robert T. Foss and Margaret Foss as trustees for the Robert T & Margaret Foss  
Revocable Trust U/A 3/31/04; Shelby Jordan and Becky Jordan; Trisha L. Freres and Theodore  
Kyle Freres as trustees for the Trisha L. Freres Living Trust U/A 3/31/04; Walter Friesen;  
William J. Cyr; William Ten Brink as trustee for the Ten Brink Trust U/A 10/2/86; William  
Wiley and Marianne Wiley as trustees for the Wiley Family Living Trust U/A 7/19/95;  
Buckthorn LLC; Marc Bienstock and Jenny I. Bienstock; Mark Sterin; Nancy L. Benson as  
trustee for the Nancy L. Benson Living Trust U/A 11/11/02; NFS/FMTC Rollover IRA FBO  
James A. Tamborello; NFS/FMTC Rollover IRA FBO Richard Davis Moore; Skee Goedhart as  
trustee for the Paracelsus Revocable Trust U/A 7/25/97; Susan C. Cullen; Gayle M. Sanders and  
Deborah Sanders as trustees for the Gayle M. Sanders Family Trust Revocable Trust U/A  
8/15/02; Marc W. Levin and Susan G. Levin; NFS/FMTC Rollover IRA FBO Donald T. Glaser  
Jr.; David Alan Scully; Jerry F. McWilliams; Michael Scully; NFS/FMTC Rollover IRA FBO  
Todd Howard Overgard; David Arita; Deborah Foreman as trustee for the Deborah D. Foreman  
Trust U/A 9/29/94; HCR Investments Inc.; Lynn Havlik; Barbara S. Meister as trustee for the  
Meister Non-Exempt Marital Trust U/A 11/17/83; Brian S. Behan; Cynthia Kessler and James

Kessler; NFS/FMTC IRA FBO Howard W. Wahl; Norman S. Kramer and Linda L. Kramer; Quincy Murphy Inc.; Robert L. Bishop; Scott Davies and Misty Davies as trustees on for the Scott & Misty Davies Living Trust U/A 6/28/07; Barbara Hearst; Cindy J. Lewis as trustee for the Cindy J. Lewis Declaration of Trust U/A 3/11/93; Jack Abrams and Margo Abrams as trustees for the Jack Abrams Pension Plan 1; Jim Griffin as custodian for the Michelle E. Griffin UTMA Oh; Jim Griffin as custodian for the Daniel J. Griffin UTMA Oh; Julia L. Griffin; NFS/FMTC IRA FBO Leonard Siegel; NFS/FMTC IRA FBO Royce V. Jackson; Peter D. Schiff; R. Steven Smith; Richard Potapchuk; Scott R. Griffin; Amy J. Stefanik as trustee for the Amy J. Stefanik Revocable Trust U/A 2/6/01; Andrew P. Cook and Susan R. Cook; Charlotte J. Belasco; Jean A. Davids-Osterhaus as trustee for the Jean A. Davids-Osterhaus Revocable Trust U/A 10/3/07; Larry Guagliardo; Mark A. Osterhaus as trustee for the Mark Osterhaus Revocable Trust U/A 10/31/07; Richard P. Anthony III and Kimberly J. Anthony; Steven Jay Epstein (referred to as collectively as the “Investors”).

2. I make this affirmation in support of Plaintiffs’ request to supplement the Inquest record. I am fully familiar with the facts set forth below by virtue of my review of the file.

3. Annexed hereto as **Exhibit A** is a chart summarizing all the Investors in this action and the amount invested by each. The order listed in the chart corresponds to the order of the Notes and signature pages in the Securities Purchase Agreement.

4. Annexed hereto as **Exhibit B** are true and correct copies of the Notes for each Investor in this action. For the convenience of the Court, Exhibit B is broken up by the individual Investors. The tab numbers correspond to the numbers in Exhibit A.

5. Annexed hereto as **Exhibit C** is true and correct copy of the Securities Purchase Agreement with all exhibits and signatures from each Investor in this action. For the

convenience of the Court, Exhibit C is broken up by the individual Investors. The tab numbers correspond to the numbers in Exhibit A.

6. Annexed hereto as **Exhibit D** is true and correct copy of the Confidential Private Placement Memorandum, dated August 30, 2010 (“Memorandum”).

7. Annexed hereto as **Exhibit E** is true and correct copy of the Registration Rights Agreement with the signatures of all Investors. For the convenience of the Court, Exhibit E is broken up by the individual Investors. The tab numbers correspond to the numbers in Exhibit A.

8. Annexed hereto as **Exhibit F** is true and correct copy of the Closing Escrow Agreement.

9. Annexed hereto as **Exhibit G** is true and correct copy of the Make Good Escrow Agreement.

10. Annexed hereto as **Exhibit H** is true and correct copy of the Disbursement Request.

11. Annexed hereto as **Exhibit I** is true and correct copy of the Series F Common Stock Purchase Warrants issued to each individual Investor (“Series F Warrants”). For the convenience of the Court, Exhibit I is broken up by the individual Investors. The tab numbers correspond to the numbers in Exhibit A.

12. Annexed hereto as **Exhibit J** is true and correct copy of the Series F Common Stock Purchase Warrants issued to Placement Agent designees.

13. Annexed hereto as **Exhibit K** is a true and correct copy of the Affidavit of Peter Chema dated January 15, 2015 filed in this action.<sup>1</sup>

---

<sup>1</sup> For convenience, the exhibits to the Affidavit of Peter Chema, which include the Notes and the SPA, are not attached herewith and Plaintiffs refer the Court to Exhibits B and C annexed hereto respectively.

14. Annexed hereto as **Exhibit L** is a chart detailing the amount owed to Investors, specifically calculating the interest and crediting Yayi for prior payments.

15. Annexed hereto as **Exhibit M** is a chart summarizing the total fees and costs Plaintiffs incurred enforcing their rights under the Notes.

16. Annexed hereto as **Exhibit N** are true and correct copies of Anderson Kill's P.C.'s invoices through July 2016 in this matter.

17. Annexed hereto as **Exhibit O** are the biographies of the Anderson Kill P.C. attorneys who worked on this matter.

18. Annexed hereto as **Exhibit P** is a copy of the proposed Second Amended Complaint.

19. Annexed hereto as **Exhibit Q** is a *redlined* copy of the proposed Second Amended Complaint.

#### **Attorneys' Fees and Costs**

20. Euro Pacific respectfully requests attorneys' fees and costs incurred in its successful prosecution of Defendant's tortious breach in this litigation and its pursuit to recover funds invested in Yayi.

21. Euro Pacific is entitled to reasonable attorneys' fees and costs pursuant to Section 12 of the Notes which states "[t]he Company agrees that, in the Event of Default, to reimburse the Holder for all reasonable costs and expenses (including reasonable legal fees of one counsel) incurred in connection with the enforcement and collection of this Note." *See* Ex. A.

22. The attorneys' fees and costs requested herein were incurred for services rendered by Anderson Kill P.C. The attorneys' fees incurred are \$62,049.00 and the costs incurred are \$3,888.02 through July 8, 2016. *See* Ex. M.

23. The fees requested are reasonable in light of the substantial work that was conducted on this matter. This work included, but is not limited to, reviewing all the transaction documents, as well as conducting background research on Yayi and all Investors named in the action, drafting a comprehensive complaint, preparing an Order to Show Cause for Default, preparing for and attending a hearing on default, and filing an inquest with supporting affidavits.

24. The billing rates for the attorneys, law clerks and paralegals working on the instant litigation ranged from \$150 per hour for a paralegal to \$375 per hour for a partner. These rates constitute reasonable rates because they are not only a substantial discount from ordinary billing rates for Anderson Kill P.C., but are also a substantial discount for attorneys practicing in New York City.

25. I graduated from Touro College, Jacob D. Fuchsberg Law Center, J.D., in 2008, magna cum laude. While attending Touro College, I served as senior staff member on the Touro Law Review and Executive Editor on the Touro International Law Review. I also was awarded the American Bankruptcy Institute's Medal of Excellence, the Cali Excellence for the Future Award in Secured Transactions and Trusts & Estates, and an Academic Achievement Scholarship.

26. After I graduated from Law School, I joined Decotiis, FitzPatrick & Cole LLP. I then joined Windels, Marx, Lane & Mittendorf, LLP in 2011 and later Anderson Kill in 2013, where I currently serve as the co-head of the Litigation Department.

27. Throughout my career, I have developed a unique commercial litigation practice specializing in commercial debt collection and enforcement of judgments. Specifically, I have focused my practice on representing U.S. investors in foreign companies that have "gone dark," on U.S. exchanges. I have represented both institutional and individual judgment creditors in

recovering funds both domestic and abroad and have developed an aggressive and cost-effective approach to pursuing post-judgment rights and remedies. *See* Ex. O.

Dated: New York, New York  
March 16, 2016

/s/ David Graff

---

David Graff